



SK Legal Alert

June 2023

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Amendment to the Act on Protection of “Whistleblowers”

The Act on Protection of Persons Reporting on Antisocial Activity - “whistleblowers” (the “**Act**”) has been in force in the Slovak Republic since 1 March 2019. However, as the Act was not fully compliant with the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, as amended (the “**Directive**”), the National Assembly of the Slovak Republic approved an amendment to the Act to address several legal deficiencies of the Act in the light of the Directive. The amendment to the Act was promulgated in the Collection of Laws of the Slovak Republic under No. 189/2023 on 1 June of this year. A short summary of the most significant changes to the Act, most of which will enter into force on 1 July 2023, will be presented in this Alert.

Whistleblower

In order to provide protection to any person working in the private or public sector who reports breaches of European Union law, the definition of whistleblower under the Act has been extended in line with the Directive to include “**persons in other similar relationship**” to cover more than just “persons in an employment relationship”. As “other similar relationship” is considered, in particular:

- ▶ the performance of rights related to participation, administration or management in a legal entity,
- ▶ the activity of a person performing the function of a member of a legal entity body,
- ▶ the activity of a self-employed person,
- ▶ the performance of rights and obligations arising from a contract the subject of which is the supply of goods, the execution of construction works or the provision of services,
- ▶ professional practice, graduate practice, temporary relief work for the unemployed, volunteer activity.

The protection under the Act has also been extended to persons whose employment / other similar relationship has not been established yet or has already ended, if they became aware of the information about the antisocial activity during the selection procedure / pre-contractual relationship or in the course of the relationship.

Other protected persons

In addition to a whistleblower, the amendment to the Act will also protect the following persons (“**protected persons**”) from the threat / imposition of a retaliatory measure:

- ▶ a persons close to the whistleblower,
- ▶ a natural person - entrepreneur / legal entity which the whistleblower controls, in which the whistleblower has a participation, in which the whistleblower performs a function of a member of a legal entity body or for which the whistleblower performs an employment activity,

SK Legal Alert

June 2023

Weinhold Legal

- ▶ a natural person - entrepreneur or a legal entity controlling a legal entity in which the whistleblower has a participation or in which the whistleblower performs the function of a member of the legal entity body,
- ▶ a person who provided assistance to the whistleblower in connection with the notification concerning the antisocial activity (the "notification"), and
- ▶ the responsible person or a person who participates in the performance of the tasks of the responsible person under the Act.

Internal Notifications Verification System

In particular the following changes will take place in this area as of 1 September 2023:

- ▶ The obligation to appoint a responsible person to carry out tasks under the Act will apply, in addition to an employer employing at least 50 employees and an employer who is a public authority employing at least five employees, to **an employer providing financial services, transport safety services or environmental services**, regardless of the number of employees,
- ▶ The tasks of the responsible person may also be carried out by an external person under a contract with and on behalf of the employer, to the extent of receiving and acknowledging notifications. The external person will also be able to carry out notifications verification on behalf of an employer who is not a public authority and who employs fewer than 250 employees. **However, this does**

not exempt the employer from the obligation to designate a responsible person also within his organisation,

- ▶ The receipt of the notification shall be acknowledged by the employer **within 7 days from receipt**; the employer shall verify and report the results of the verification **within 90 days from acknowledgement of receipt**, or within 90 days from the expiration of 7 days after the receipt of the notification if the employer has not acknowledged receipt of the notification,
- ▶ The employer will be obliged to submit a report on the measures taken to eliminate the identified deficiencies to the office when the latter carries out an inspection.

Retaliatory measure

The amendment to the Act also introduces a definition of the term "**retaliatory measure**", which is an act or omission of an act in connection with the whistleblower's employment / other similar relationship triggered by the notification or disclosure of information about antisocial activity and which has caused or is likely to cause unjustified harm to the whistleblower or the protected person; the definition also includes an enumeration of specific acts, such as, e.g.

- ▶ dismissal / immediate termination of employment,
- ▶ termination during the probationary period / non-renewal of employment for an indefinite period,
- ▶ revocation, demotion or refusal of promotion,
- ▶ change of work duties, place of work or working hours,
- ▶ reduction in pay, non-award of pay/personal allowance,



SK Legal Alert

June 2023

Weinhold Legal

- ▶ not providing professional training,
- ▶ disciplinary action,
- ▶ coercion, intimidation or harassment,
- ▶ defamation of reputation,
- ▶ withdrawal from a contract for the supply of goods and services,
- ▶ revocation of a licence or permit.

Office for Whistleblowers Protection

The Office for the Protection of Whistleblowers of Antisocial Activity will be known as the “**Office for the Protection of Whistleblowers**” (the “**Office**”) from 1 July 2023.

The duties of the Office will be expanded to include the submission of a report to the European Commission for the previous calendar year on the number of notifications received, the proceedings initiated on the basis of those notifications and the estimated damage detected, which will also be published on its website.

Administrative offences and sanctions

Following the introduction of the new obligations, the administrative offences shall be expanded and the existing sanctions for breaches of the Act increased.

For example, the Office may impose a fine of **up to 30,000 €** on an employer obliged to designate a responsible person if

- ▶ it has not taken measures to remedy deficiencies identified in the course of the compliance check in relation to the issue and implementation of the internal rules for the submission, recording and verification of notifications; or
- ▶ has not submitted to the Office a written report on the measures taken to remedy the deficiencies identified in the fulfilment of those obligations and the reasons for them.

The Office may impose a fine of **up to 50,000 €** on an employer who is not a public authority, employing at least 50 and less than 250 employees, or on an employer being a public authority and employing at least 5 and less than 250 employees, who has breached any of the obligations regarding the internal system for notifications verification.

A fine of **up to 100,000 €** may be imposed by the Office, for example on an employer who

- ▶ takes an employment action against a protected person without the consent of the Office, if consent is required,
- ▶ threatens/attempts to retaliate against the protected person,
- ▶ has an obligation to designate a responsible person, employs at least 250 employees, and has breached any of the obligations regarding the recording and verification of notifications and the responsible person.

In the case of repeated breaches of the obligations within two years from the date of the decision becoming final, the Office may in some cases increase the fine up to twice as much.



SK Legal Alert

June 2023

Weinhold Legal

The amended Act will enter into force **on 1 July 2023**, with the exception of the amendments to the provisions on the internal notifications verification system and on administrative offences, which will enter into force **on 1 September 2023**.



The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, s.r.o. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

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